

“(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§13101–13106) of title III of div. C of Pub. L. 107–273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

“(1) the Committees on Appropriations and Judiciary of the Senate; and

“(2) the Committees on Appropriations and Judiciary of the House of Representatives.”

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100–703, title I, §102, Nov. 19, 1988, 102 Stat. 4674, provided that: “Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–607, §2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

Chap.		Sec.
10.	Patentability of Inventions	100
11.	Application for Patent	111
12.	Examination of Application	131
13.	Review of Patent and Trademark Office Decisions	141
14.	Issue of Patent	151
15.	Plant Patents	161
16.	Designs	171
17.	Secrecy of Certain Inventions and Filing Applications Abroad¹	181
18.	Patent Rights in Inventions Made with Federal Assistance	200

AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted “Examination of Application” for “Examination of Applications” in heading of chapter 12.

1982—Pub. L. 97–256, title I, §101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

Sec.	
100.	Definitions.
101.	Inventions patentable.
102.	Conditions for patentability; novelty and loss of right to patent.
103.	Conditions for patentability; non-obvious subject matter.
104.	Invention made abroad.
105.	Inventions in outer space.

AMENDMENTS

1990—Pub. L. 101–580, §1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

¹ So in original. Does not conform to chapter heading.

(a) The term “invention” means invention or discovery.

(b) The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms “United States” and “this country” mean the United States of America, its territories and possessions.

(d) The word “patentee” includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(e) The term “third-party requester” means a person requesting ex parte reexamination under section 302 or inter partes reexamination under section 311 who is not the patent owner.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4603], Nov. 29, 1999, 113 Stat. 1536, 1501A–567.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–113 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, §4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, §1, 29 Stat. 692, (2) May 23, 1930, ch. 312, §1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word “art” has been replaced by “process”, which is defined in section 100. The word “art” in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. “Process” has been used as its meaning is more readily grasped than “art” as interpreted, and the definition in section 100(b) makes it clear that “process or method” is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition

of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;¹ or

(f) he did not himself invent the subject matter sought to be patented, or

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 92-358, § 2, July 28, 1972, 86 Stat. 502; Pub. L. 94-131, § 5, Nov. 14, 1975, 89 Stat. 691; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4505, 4806], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-590; Pub. L. 107-273, div. C, title III, § 13205(1), Nov. 2, 2002, 116 Stat. 1902.)

¹ So in original. The semicolon probably should be a comma.

HISTORICAL AND REVISION NOTES

Paragraphs (a), (b), and (c) are based on Title 35, U.S.C., 1946 ed., § 31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

No change is made in these paragraphs other than that due to division into lettered paragraphs. The interpretation by the courts of paragraph (a) as being more restricted than the actual language would suggest (for example, "known" has been held to mean "publicly known") is recognized but no change in the language is made at this time. Paragraph (a) together with section 104 contains the substance of Title 35, U.S.C., 1946 ed., § 72 (R.S. 4923).

Paragraph (d) is based on Title 35, U.S.C., 1946 ed., § 32, first paragraph (R.S. 4887 (first paragraph), amended (1) Mar. 3, 1897, ch. 391, § 3, 29 Stat. 692, 693, (2) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (3) June 19, 1936, ch. 594, 49 Stat. 1529).

The section has been changed so that the prior foreign patent is not a bar unless it was granted before the filing of the application in the United States.

Paragraph (e) is new and enacts the rule of *Milburn v. Davis-Bournonville*, 270 U.S. 390, by reason of which a United States patent disclosing an invention dates from the date of filing the application for the purpose of anticipating a subsequent inventor.

Paragraph (f) indicates the necessity for the inventor as the party applying for patent. Subsequent sections permit certain persons to apply in place of the inventor under special circumstances.

Paragraph (g) is derived from Title 35, U.S.C., 1946 ed., § 69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391, § 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212), the second defense recited in this section. This paragraph retains the present rules of law governing the determination of priority of invention.

Language relating specifically to designs is omitted for inclusion in subsequent sections.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107-273, amended Pub. L. 106-113, § 1000(a)(9) [title IV, § 4505]. See 1999 Amendment note below. Prior to being amended by Pub. L. 107-273, Pub. L. 106-113, § 1000(a)(9) [title IV, § 4505], had amended subsec. (e) to read as follows: "The invention was described in—

"(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

"(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or".

1999—Subsec. (e). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4505], as amended by Pub. L. 107-273, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or".

Subsec. (g). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4806], amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "before the applicant's invention thereof the invention was made in this

country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.”

1975—Par. (e). Pub. L. 94-131 inserted provision for nonentitlement to a patent where the invention was described in a patent granted on an international application by another who has fulfilled the requirements of pars. (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1972—Subsec. (d). Pub. L. 92-358 inserted reference to inventions that were the subject of an inventors' certificate.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4505] of Pub. L. 106-113 effective Nov. 29, 2000 and applicable to all patents and all applications for patents pending on or filed after Nov. 29, 2000, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106-113, as amended, set out as a note under section 10 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(b) of Pub. L. 92-358 provided that: “Section 2 of this Act [amending this section] shall take effect six months from the date when Articles 1 to 12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply to applications thereafter filed in the United States.”

SAVINGS PROVISION

Section 4 of act July 19, 1952, ch. 950, 66 Stat. 815, provided that subsection (d) of this section should not apply to existing patents and pending applications, but that the law previously in effect, namely the first paragraph of R.S. 4887 [first paragraph of section 32 of former Title 35], should apply to such patents and applications. Said paragraph of section 32 provided that:

“No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months, in cases within the provisions of section 31 of this title, and six months in cases of designs, prior to the filing of the application in this country, in which case no patent shall be granted in this country.”

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, but patents issued with earlier filing dates not effective as prior art under subsec. (e) of this section of such earlier filing dates, see note set out under section 111 of this title.

§ 103. Conditions for patentability; non-obvious subject matter

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if

the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

(2) A patent issued on a process under paragraph (1)—

(A) shall also contain the claims to the composition of matter used in or made by that process, or

(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

(3) For purposes of paragraph (1), the term “biotechnological process” means—

(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to—

(i) express an exogenous nucleotide sequence,

(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

(iii) express a specific physiological characteristic not naturally associated with said organism;

(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

(C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).

(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(2) For purposes of this subsection, subject matter developed by another person and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—

(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(C) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(3) For purposes of paragraph (2), the term “joint research agreement” means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 98-622, title I, § 103, Nov. 8, 1984, 98 Stat. 3384; Pub. L. 104-41, § 1, Nov. 1, 1995, 109 Stat. 351; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4807(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-591; Pub. L. 108-453, § 2, Dec. 10, 2004, 118 Stat. 3596.)

HISTORICAL AND REVISION NOTES

There is no provision corresponding to the first sentence explicitly stated in the present statutes, but the refusal of patents by the Patent Office, and the holding of patents invalid by the courts, on the ground of lack of invention or lack of patentable novelty has been followed since at least as early as 1850. This paragraph is added with the view that an explicit statement in the statute may have some stabilizing effect, and also to serve as a basis for the addition at a later time of some criteria which may be worked out.

The second sentence states that patentability as to this requirement is not to be negated by the manner in which the invention was made, that is, it is immaterial whether it resulted from long toil and experimentation or from a flash of genius.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-453 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

1999—Subsec. (c). Pub. L. 106-113 substituted “one or more of subsections (e), (f), and (g)” for “subsection (f) or (g)”.

1995—Pub. L. 104-41 designated first and second pars. as subsecs. (a) and (c), respectively, and added subsec. (b).

1984—Pub. L. 98-622 inserted “Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-453, § 3, Dec. 10, 2004, 118 Stat. 3596, provided that:

“(a) IN GENERAL.—The amendments made by this Act [amending this section] shall apply to any patent granted on or after the date of the enactment of this Act [Dec. 10, 2004].

“(b) SPECIAL RULE.—The amendments made by this Act shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending

before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party’s rights determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4807(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-591, provided that: “The amendment made by this section [amending this section] shall apply to any application for patent filed on or after the date of the enactment of this Act [Nov. 29, 1999].”

EFFECTIVE DATE OF 1995 AMENDMENT

Section 3 of Pub. L. 104-41 provided that: “The amendments made by section 1 [amending this section] shall apply to any application for patent filed on or after the date of enactment of this Act [Nov. 1, 1995] and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 106 of Pub. L. 98-622 provided that:

“(a) Subject to subsections (b), (c), (d), and (e) of this section, the amendments made by this Act [probably should be “this title”, meaning title I of Pub. L. 98-622, enacting section 157 of this title, amending this section and sections 116, 120, 135, and 271 of this title, and enacting a provision set out as a note under section 157 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 8, 1984], and to all applications for United States patents pending on or filed after the date of enactment.

“(b) The amendments made by this Act shall not affect any final decision made by the court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 8, 1984], with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) Section 271(f) of title 35, United States Code, added by section 101 of this Act shall apply only to the supplying, or causing to be supplied, of any component or components of a patented invention after the date of enactment of this Act [Nov. 8, 1984].

“(d) No United States patent granted before the date of enactment of this Act [Nov. 8, 1984] shall abridge or affect the right of any person or his successors in business who made, purchased, or used prior to such effective date anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by section 103 or 104 of this Act [amending this section and sections 116 and 120 of this title] and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this Act, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the date of enactment.

“(e) The amendments made by this Act shall not affect the right of any party in any case pending in court on the date of enactment [Nov. 8, 1984] to have their rights determined on the basis of the substantive law in effect prior to the date of enactment.”

§ 104. Invention made abroad

(a) IN GENERAL.—

(1) **PROCEEDINGS.**—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country or a WTO member country, except as provided in sections 119 and 365 of this title.

(2) **RIGHTS.**—If an invention was made by a person, civil or military—

(A) while domiciled in the United States, and serving in any other country in connection with operations by or on behalf of the United States,

(B) while domiciled in a NAFTA country and serving in another country in connection with operations by or on behalf of that NAFTA country, or

(C) while domiciled in a WTO member country and serving in another country in connection with operations by or on behalf of that WTO member country,

that person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States, that NAFTA country, or that WTO member country, as the case may be.

(3) **USE OF INFORMATION.**—To the extent that any information in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Patent and Trademark Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Director, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) **DEFINITIONS.**—As used in this section—

(1) the term “NAFTA country” has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act; and

(2) the term “WTO member country” has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, §6, Nov. 14, 1975, 89 Stat. 691; Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103-182, title III, §331, Dec. 8, 1993, 107 Stat. 2113; Pub. L. 103-465, title V, §531(a), Dec. 8, 1994, 108 Stat. 4982; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §109 (Aug. 8, 1946, ch. 910, 60 Stat. 943).

Language has been changed and the last sentence has been broadened to refer to persons serving in connection with operations by or on behalf of the United

States, instead of solely in connection with the prosecution of the war.

REFERENCES IN TEXT

Section 2(4) of the North American Free Trade Agreement Implementation Act, referred to in subsec. (b)(1), is classified to section 3301(4) of Title 19, Customs Duties.

Section 2(10) of the Uruguay Round Agreements Act, referred to in subsec. (b)(2), is classified to section 3501(10) of Title 19.

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Subsec. (a)(3). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1994—Pub. L. 103-465 amended section generally, expanding scope of section to include WTO member countries along with NAFTA countries and defining term “WTO member country”.

1993—Pub. L. 103-182 amended section catchline and text generally. Prior to amendment, text read as follows: “In proceedings in the Patent and Trademark Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.”

1984—Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

1975—Pub. L. 94-131 inserted in exception provision reference to section 365 of this title relating to priority of applications having benefit of filing date of prior applications.

Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 531(b) of Pub. L. 103-465 provided that:

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to all patent applications that are filed on or after the date that is 12 months after the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995].

“(2) **ESTABLISHMENT OF DATE.**—An applicant for a patent, or a patentee, may not establish a date of invention for purposes of title 35, United States Code, that is earlier than 12 months after the date of entry into force of the WTO Agreement with respect to the United States by reference to knowledge or use, or other activity, in a WTO member country, except as provided in sections 119 and 365 of such title.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 applicable to all patent applications filed on or after Dec. 8, 1993, provided that applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in NAFTA country, except as provided in sections 119 and 365 of this title, that is earlier than Dec. 8, 1993, see section 335(b) of Pub. L. 103-182, set out as a note under section 1052 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 105. Inventions in outer space

(a) Any invention made, used or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Pub. L. 101-580, §1(a), Nov. 15, 1990, 104 Stat. 2863.)

EFFECTIVE DATE; SPECIAL RULES

Section 2 of Pub. L. 101-580 provided that:

“(a) EFFECTIVE DATE.—Subject to subsections (b), (c), and (d) of this section, the amendments made by the first section of this Act [enacting this section] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 15, 1990], and to all applications for United States patents pending on or filed on or after such date of enactment.

“(b) FINAL DECISIONS.—The amendments made by the first section of this Act [enacting this section] shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 15, 1990] with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) PENDING CASES.—The amendments made by the first section of this Act [enacting this section] shall not affect the right of any party in any case pending in a court on the date of enactment of this Act [Nov. 15, 1990] to have the party's rights determined on the basis of the substantive law in effect before such date of enactment.

“(d) NON-APPLICABILITY.—The amendments made by the first section of this Act [enacting this section] shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched prior to the date of enactment of this Act [Nov. 15, 1990].”

CHAPTER 11—APPLICATION FOR PATENT

Sec.	
111.	Application.
112.	Specification.
113.	Drawings.
114.	Models, specimens.
115.	Oath of applicant.
116.	Inventors.
117.	Death or incapacity of inventor.
118.	Filing by other than inventor.
119.	Benefit of earlier filing date; right of priority.
120.	Benefit of earlier filing date in the United States.
121.	Divisional applications.
122.	Confidential status of applications; publication of patent applications.

AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13206(a)(7), Nov. 2, 2002, 116 Stat. 1904, substituted “Inventors” for “Joint inventors” in item 116.

1999—Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4507(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, inserted “; publication of patent applications” after “applications” in item 122.

1994—Pub. L. 103-465, title V, §532(c)(6), Dec. 8, 1994, 108 Stat. 4987, substituted “Application” for “Application for patent” in item 111 and “Benefit of earlier filing date; right of priority” for “Benefit of earlier filing date in foreign country; right of priority” in item 119.

§ 111. Application

(a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title; and

(C) an oath by the applicant as prescribed by section 115 of this title.

(3) FEE AND OATH.—The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) FAILURE TO SUBMIT.—Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

(A) a specification as prescribed by the first paragraph of section 112 of this title; and